That latter sum was to be distributed among the husband and the children of the deceased in proportions specified in his judgment.

Before us that award of damages has been criticised as excessive and in our opinion it erred in two respects.

In the first place it failed to take into account the value of the accelerated succession accruing to the respondent himself in respect of some $7,000 which the deceased woman (who died intestate) had in the Bank and in the second place it erred because there was a serious miscalculation in respect of the damages for loss of support.

We therefore allow the appeal to this extent. We will set aside the award of damages as assessed by the learned trial Judge and will substitute for it the following.

In the first place we will allow $1,500 for funeral expenses which is the amount awarded by the trial Judge.

In the second place we will award $3,500 for loss of expectation of life. That, again, is the amount awarded by the learned trial Judge and indeed, as has been said elsewhere, it has become almost a conventional award in these cases.

In respect of the loss of support we will award a total sum of $6,290. We have arrived at this sum in the following way. We have accepted the trial Judge's figures (which have not been seriously attacked) that the monthly value of the loss of support was $125 and that the deceased's natural expectation of life was 15 years but that should be reduced to a conventional expectation of life of 12 years to make allowance for the various relevant contingencies. On these figures, as a matter of arithmetic 12 years' purchase of $125 a month comes to $13,290. From that fall to be deducted two sums, one is the damages awarded in respect of loss of expectation of life which will go to the respondent himself and the other is something in respect of the respondent's accelerated succession to the amount of $7,000 which is lying in the Bank to the credit of the deceased woman's estate. The present value of that is $3,500, assuming a natural expectation of life of 15 years. That makes a total of $7,000 to be deducted from the estimated value of the support which has been lost and it must all be deducted from the respondent's share because he is the sole beneficiary of the estate. Deducting that sum of $7,000 there is a balance of $6,290 and we think that this should be dealt with by dividing it among the children in the proportions set out by Mr. Justice Adams in his judgment.

There will, therefore, be substituted for the judgment in the High Court judgment for $11,290 made up as I have described, $6,290 of that sum to be apportioned among the children as was done by Mr. Justice Adams. The appellant will have to have the costs of this appeal and his deposit will be paid out to him.

Perhaps I should add that there can be no question of standardizing damages in these running-down cases coming under the Civil Law Ordinance. Nevertheless we are endeavouring to scrutinize such of them as come before us on the same principles. That is in the benefit of the public as a whole because obviously if Insurance companies and practitioners have some idea as to how these cases will ultimately be dealt with here it should facilitate settlements.

Hill and **Good JJ.A.** concurred.

Appeal allowed.

Solicitors: *George & Khoo; Kam Woon Wah & Co.*

YEO TIN SANG v. LIM CHOO KEE

[C. A. (Thomson C.J., Hill and Good JJ. A.) May 16, 1960]

[J. B. — F.M. Civil Appeal No. 48 of 1959]

Principal and Agent — Injury to 3rd party by negligence of agent — Liability of principal.

Where injury or loss is caused to a third person by the wrongful act of an agent who is acting within the scope of his authority, the principal is liable jointly and severally with the agent.

COURT OF APPEAL, appeal from the decision of Neal J.

The plaintiff (respondent) in this case alleged that on the morning of May 16, 1957 he was travelling towards Singapore in a motor car owned by the appellant and driven by one Lim who was either the agent or servant of the appellant or was driving with his permission. He also alleged that the said Lim drove the vehicle in a negligent manner in consequence of which the vehicle went into a drain on its wrong side of the road and overturned, and as a result of which accident he suffered injuries including a fracture of his right hand. He claimed special damages of $300 for medical and transport expense, $1,750 for loss of earning for 5 months, and general damages in the sum of $20,000. In his defence the appellant denied that the motor car was driven by Lim as his servant or agent as alleged, and that he had no interest or concern in the journey undertaken by Lim and the passengers in the car, nor had he any control of the car thereon.

At the trial evidence was also given that the respondent had hired the car in which they were travelling from the appellant and that he had undertaken to pay $30 per day for hiring the car and the driver, the fare having to be paid to the driver at the conclusion of the trip. In cross-examination the appellant made no attack on respondent's evidence as regards the negligent driving of Lim, but he concentrated on the evidence as to hiring and the damages suffered by the respondent. His version of the circumstances under which Lim came to be driving his car was that he was sick at the time the car was borrowed, that Lim had approached his father for the loan thereof and the father in turn came to the house to obtain his consent to the use of the car by Lim to go to one or two places.

The learned trial Judge found as facts: (1) the appellant hired the motor car to the respondent for the purposes of a trip to Singapore; (2) the appellant appointed him as his agent for the purpose of that trip; (3) the accident was caused by the negligence of Lim; and disallowed special damages because the respondent could have obtained treatment at a nearer hospital instead of having to travel, allowed $800 for loss of earning and general damages $3000.

C. Paramjothy for the appellant.

R. Murugason for the respondent.

Thomson C.J. (delivering oral judgment): For myself I will start my consideration

of this appeal by quoting the following decision from an old edition of *Bowstead* on Agency*:—

"Where injury or loss is caused to a third person by the wrongful act . . . . . of an agent who is acting within the scope of his authority, the principal is liable jointly and severally with the agent."

I accept that as a correct statement of the law.

In this case the trial Judge says he accepts the evidence of the plaintiff that he had hired the car from the second defendant (the present appellant) for the purpose of a trip to Singapore and that the first defendant was the driver appointed by the second defendant to drive the plaintiff to Singapore. The plaintiff was to pay $30 a day for the use of the car and this was to include the services of the driver.

If that evidence be accepted, and on all the authorities I can see no reason which would justify us in interfering with the trial Judge's decision that it should be accepted, then in the light of the statement of the law as I have stated it the second defendant was clearly liable for the damage caused by the first defendant's wrongful act in the course of the journey to Singapore.

In the circumstances I would dismiss the appeal with costs and I would order payment out of the deposit to the respondent towards his taxed costs.

Hill and Good JJ.A. concurred.

Appeal dismissed.

Solicitors: *Wong & Paramjothy; A. N. Mitra.*

MOHAMED HUSSEIN v. MOHAMED ABDULLAH

[C. A. (Thomson C.J., Hill and Good JJ. A.) May 30, 1960]

[K .L. — F.M. Civil Appeal No. 49 of 1959]

Landlord and Tenant — Business premises — Letting furnished premises for a term during his absence — "Personally in occupation of the premises" — "For a term during his absence" — Control of Rent Ordinance, 1956, s.12(1)(h) — Construction.

The respondent, before he left for India, sublet to the appellant business premises furnished for a period of two years. About a year after, he returned and when the period for which he had let the premises expired he demanded possession of them. The premises were subject to the provisions of the Control of Rent Ordinance. Ong J. held that the respondent was entitled to judgment by virtue of section 12(1)(h) of the Ordinance. On appeal,

Held: the respondent's case was well within the scope of section 12(1)(h) of the Control of Rent Ordinance and therefore the appeal must be dismissed.

Per Good J.A.: "It would be impracticable and unrealistic to construe 'for a term during his absence' as meaning either that the term and the absence must be of exactly the same duration or that the term must fall within the period of the absence. In order to arrive at an effective practical interpretation it is necessary to apply a broader test than that of time alone. The intention of the parties must be taken into consideration, and all the circumstances examined to find out whether the letting was a *bona fide* transaction connected with and incidental to the landlord's intended absence."

Cases referred to:—

(1) *Mann* v. *Merrill* [1945] 1 All E.R. 708.

(2) *R.* v. *Clixby* (1847) 11 J.P. 568.

(3) *Archer* v. *Kelly* (1860) 1 Drew and Son 300, at pp. 306-7.

(4) *Inland Revenue Commissioners* v. *St. Luke's Hospital* (1930) 144 L.T. 50.

(5) *The Queen* v. *The Inhabitants of Anderson* (1846) 9 Q.B. 663.

(6) *Henry* v. *Taylor* [1954] 1 Q.B. 506; [1954] 2 W.L.R. 601; [1954] 1 All E.R. 721.

(7) *Romon* v. *City of London Real Property Co. Ltd.* [1921] 1 K.B. 49 at p. 55.

(8) *Read* v. *Goater* [1921] 1 K.B. 611 at p. 615.

(9) *Marsh* v. *Bantoft* (1903) 67 J.P. 12.

COURT OF APPEAL.

Morris Edgar for the appellant.

R. Ramani for the respondent.

Cur. Adv. Vult.

Thomson C.J.: The plaintiff in this case has been since June, 1951, the sub-tenant of premises at No: 183, Batu Road, Kuala Lumpur, in which he carried on business as a bookseller under the name of Modern Book Store.

In 1953 he was thinking of going to India for a visit. He found himself unable to make arrangements for carrying on his business during his absence and in the event he decided to close down his business temporarily and to sub-sublet the premises to the present defendant.

On 30th November, 1953, the parties entered into a written agreement whereby the plaintiff sub-sublet the premises furnished to the defendant for a period of two years at a monthly rental of $250. I do not think anything turns on the actual terms of this agreement and so do not propose to discuss it in detail.

About the beginning of December in pursuance of this agreement the plaintiff removed his stock-in-trade from the premises and the defendant went into occupation. In the meantime he had been negotiating with the Immigration authorities regarding the time he could be absent from Malaya without endangering his right of re-entry and although he seems to have wished to be away for about two years the Immigration authorities were not prepared to allow him to be absent for more than a year with which he had perforce to be content. He accordingly proceeded to India in January, 1954, and returned to Malaya in December of that year and when the period for which he had left his premises at No: 183, Batu Road, expired he demanded possession of them. This demand was resisted and in the event he commenced the present proceedings on 26th September, 1956, that is about three months after the coming into force of the Control of Rent Ordinance, 1956, on 1st July, 1956.

The premises were subject to the provisions of the Control of Rent Ordinance, 1948, and since its repeal have been subject to the provisions of the Control of Rent Ordinance, 1956. From the commencement of the present proceedings it has been common ground that the plaintiff's case stood or fell according as to whether or not it came within the scope of section 12(1)(h) of the 1956 Ordinance which reads as follows:—

* 1944 (10th Ed.) p. 206.